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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MARGARET E. CIRILLO et al.,

Plaintiffs and Appellants,

v.

DENNIS J. CROOKS,

Defendant and Appellant.

**D054247**

**(Super. Ct. No. P192240)**

**ORDER MODIFYING OPINION  
AND DENYING PETITION FOR  
REHEARING**

**NO CHANGE IN JUDGMENT**

THE COURT:

It is ordered that the opinion filed herein on March 2, 2010 be modified as follows:

1. The following section is added to page 7 of the opinion:

C. Attorney Fee Award

The trial court concluded that Margaret and Joan were entitled to their attorney fees paid out of the trust under the common fund theory. The trial court ordered Margaret and Joan to submit their attorney fee documentation to the new trustee, and ordered the trustee to present the information to the court with a request for reimbursement for "whatever portions of the fees she believes are attributable to the common defense of these actions."

Crooks does not contend that the trial court abused its discretion in awarding Margaret and Joan attorney fees under the common fund theory. (*Kasperbauer v. Fairfield* (2009) 171 Cal.App.4th 229, 234 [abuse of discretion standard applies to the trial court's decision granting fee request payable from the trust's assets].) Rather, he asserts that Margaret and Joan are not entitled to all the attorney fees they incurred for their duplicative efforts. While Crooks may be correct, this issue is not properly before us as there is no order fixing the amount of attorney fees awarded to Margaret and Joan in the appellate record.

There is no change in the judgment.

The petition for rehearing is denied.

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NARES, Acting P. J.

Copies to: All parties